

## § 37.51

## 6 CFR Ch. I (1–1–11 Edition)

if the covered employee was either convicted of those offenses in a civilian or military jurisdiction, or admits having committed acts which constitute the essential elements of any of those criminal offenses within the seven years preceding the date of employment in the covered position; or the covered employee was released from incarceration for the crime within the five years preceding the date of employment in the covered position.

(iii) *Under want or warrant.* A covered employee who is wanted or under indictment in any civilian or military jurisdiction for a felony referenced in this section is disqualified until the want or warrant is released.

(iv) *Determination of arrest status.* When a fingerprint-based check discloses an arrest for a disqualifying crime referenced in this section without indicating a disposition, the State must determine the disposition of the arrest.

(v) *Waiver.* The State may establish procedures to allow for a waiver of the requirements of paragraphs (b)(1)(ii) or (b)(1)(iv) of this section under circumstances determined by the State. These procedures can cover circumstances where the covered employee has been arrested, but no final disposition of the matter has been reached.

(2) *Employment eligibility status verification.* The State shall ensure it is fully in compliance with the requirements of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A) with respect to each covered employee. The State is encouraged to participate in the USCIS E-Verify program (or any successor program) for employment eligibility verification.

(3) *Reference check.* Reference checks from prior employers are not required if the individual has been employed by the DMV for at least two consecutive years since May 11, 2006.

(4) *Disqualification.* If results of the State's CHRC reveal a permanent disqualifying criminal offense under paragraph (b)(1)(i) or an interim disqualifying criminal offense under paragraph (b)(1)(ii), the covered employee may not be employed in a position described

in paragraph (a) of this section. An employee whose employment eligibility has not been verified as required by section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A) may not be employed in any position.

(c) *Appeal.* If a State determines that the results from the CHRC do not meet the standards of such check the State must so inform the employee of the determination to allow the individual an opportunity to appeal to the State or Federal government, as applicable.

(d) Background checks substantially similar to the requirements of this section that were conducted on existing employees on or after May 11, 2006 need not be re-conducted.

### Subpart E—Procedures for Determining State Compliance

#### § 37.51 Compliance—general requirements.

(a) *Full compliance.* To be in full compliance with the REAL ID Act of 2005, 49 U.S.C. 30301 note, States must meet the standards of subparts A through D or have a REAL ID program that DHS has determined to be comparable to the standards of subparts A through D. States certifying compliance with the REAL ID Act must follow the certification requirements described in § 37.55. States must be fully compliant with Subparts A through D on or before May 11, 2011. States must file the documentation required under § 37.55 at least 90 days prior to the effective date of full compliance.

(b) *Material compliance.* States must be in material compliance by January 1, 2010 to receive an additional extension until no later than May 10, 2011 as described in § 37.63. Benchmarks for material compliance are detailed in the Material Compliance Checklist found in DHS' Web site at <http://www.dhs.gov>.

EFFECTIVE DATE NOTE: At 74 FR 68478, Dec. 28, 2009, in § 37.51, paragraph (b) was stayed from Jan. 1, 2010 until further notice.

#### § 37.55 State certification documentation.

(a) States seeking DHS's determination that its program for issuing REAL ID driver's licenses and identification

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cards is meeting the requirements of this part (full compliance), must provide DHS with the following documents:

(1) A certification by the highest level Executive official in the State overseeing the DMV reading as follows:

"I, [name and title (name of certifying official), (position title) of the State (Commonwealth)] of \_\_\_\_\_, do hereby certify that the State (Commonwealth) has implemented a program for issuing driver's licenses and identification cards in compliance with the requirements of the REAL ID Act of 2005, as further defined in 6 CFR part 37, and intends to remain in compliance with these regulations."

(2) A letter from the Attorney General of the State confirming that the State has the legal authority to impose requirements necessary to meet the standards established by this part.

(3) A description of the State's exceptions process under § 37.11(h), and the State's waiver processes under § 37.45(b)(1)(v).

(4) The State's Security Plan under § 37.41.

(b) After DHS's final compliance determination, States shall recertify compliance with this part every three years on a rolling basis as determined by DHS.

### § 37.59 DHS reviews of State compliance.

State REAL ID programs will be subject to DHS review to determine whether the State meets the requirements for compliance with this part.

(a) *General inspection authority.* States must cooperate with DHS's review of the State's compliance at any time. In addition, the State must:

(1) Provide any reasonable information pertinent to determining compliance with this part as requested by DHS;

(2) Permit DHS to conduct inspections of any and all sites associated with the enrollment of applicants and the production, manufacture, personalization and issuance of driver's licenses or identification cards; and

(3) Allow DHS to conduct interviews of the State's employees and contractors who are involved in the application and verification process, or the manufacture and production of driver's

licenses or identification cards. DHS shall provide written notice to the State in advance of an inspection visit.

(b) *Preliminary DHS determination.* DHS shall review forms, conduct audits of States as necessary, and make a preliminary determination on whether the State has satisfied the requirements of this part within 45 days of receipt of the Material Compliance Checklist or State certification documentation of full compliance pursuant to § 37.55.

(1) If DHS determines that the State meets the benchmarks of the Material Compliance Checklist, DHS may grant the State an additional extension until no later than May 10, 2011.

(2) If DHS determines that the State meets the full requirements of subparts A through E, the Secretary shall make a final determination that the State is in compliance with the REAL ID Act.

(c) *State reply.* The State will have up to 30 calendar days to respond to the preliminary determination. The State's reply must explain what corrective action it either has implemented, or intends to implement, to correct any deficiencies cited in the preliminary determination or, alternatively, detail why the DHS preliminary determination is incorrect. Upon request by the State, an informal conference will be scheduled during this time.

(d) *Final DHS determination.* DHS will notify States of its final determination of State compliance with this Part, within 45 days of receipt of a State reply.

(e) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

### § 37.61 Results of compliance determination.

(a) A State shall be deemed in compliance with this part when DHS issues a determination that the State meets the requirements of this part.

(b) The Secretary will determine that a State is not in compliance with this part when it—

(1) Fails to submit a timely certification or request an extension as prescribed in this subpart; or

(2) Does not meet one or more of the standards of this part, as established in a determination by DHS under § 37.59.